

REMARKS

Entry of the foregoing amendments is respectfully requested.

Summary of Amendments

Upon entry of the foregoing amendments, claims 24, 25 and 41-43 are cancelled, claims 52-56 are added and claims 13, 29 and 30 are amended, whereby claims 13-23, 26-40 and 44-56 will be pending, with claims 13, 36 and 56 being independent claims. Claims 18-23, 27, 50 and 51 are withdrawn from consideration.

Support for the new and amended claims can be found throughout the present specification (see, e.g., the Examples) and the cancelled claims.

Applicants emphasize that the amendments to claims 13 and 30 and the cancellation of claims 24, 25 and 41-43 are without prejudice or disclaimer, and Applicants expressly reserve the right to prosecute the cancelled claims and the amended claims in their original, unamended form in one or more continuation and/or divisional applications.

Summary of Office Action

As an initial matter, Applicants note with appreciation that the Examiner has indicated consideration of the Information Disclosure Statements filed October 12, 2004 and October 4, 2005 by returning signed and initialed copies of the Forms PTO-1449 submitted therein.

Applicants further note with appreciation that the Examiner has acknowledged the claim for foreign priority under 35 U.S.C. § 119(a)-(d) and (f) and the receipt of a certified copy of the priority document.

The restriction and election of species requirements are made final and claims 18-25, 27, 41-43, 50 and 51 are withdrawn from consideration.

Claims 28 and 29 are objected to because of informalities.

Claims 13-17, 26, 30, 32-35 and 45-49 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Touzan et al., U.S. Patent No. 6,210,656 B1 (hereafter "TOUZAN").

Claims 28 and 29 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over TOUZAN and further in view of Schoenrock et al., U.S. Patent No. 5,876,737 (hereafter "SCHOENROCK").

Claim 31 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over TOUZAN and further in view of Giacomoni, U.S. Patent No. 7,083,799 B1 (hereafter "GIACOMONI").

Claims 36-40 and 44 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over TOUZAN and GIACOMONI and further in view of Dixon et al., U.S. Patent No. 5,869,070 (hereafter "DIXON").

Claims 13-17, 26, 30-40 and 44-49 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1-5, 7-21, 26-29, 31-34 and 40-44 of co-pending Application No. 10/830,001.

Response to Office Action

Withdrawal of the objections and rejections of record is respectfully requested, in view of the foregoing amendments and the following remarks.

Response to Objection to Claims

Claims 28 and 29 are objected to because of inconsistencies in the recitations of the compound “2-ethylhexyl isostearate”.

Applicants respectfully submit that claim 29 has been amended to make the recitation of “2-ethylhexyl isostearate” consistent with that in claim 28. Accordingly, this objection is moot.

Response to Rejection of Claims under 35 U.S.C. § 103(a) over TOUZAN

Claims 13-17, 26, 30, 32-35 and 45-49 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over TOUZAN. The rejection essentially alleges that Examples 1 and 3 of TOUZAN disclose self-foaming cleansing cream formulations which are encompassed by independent claim 13 except for the fact that they contain a lower amount of oil components than that recited in present claim 13. The rejection further alleges that TOUZAN teaches that the formulations disclosed therein may contain up to 50 % of an oil phase, thereby rendering claim 13 obvious. Regarding the rejected dependent claims, the rejection alleges that the elements recited therein are taught or rendered obvious by TOUZAN as well.

Applicants respectfully disagree with the Examiner in this regard. Nevertheless, claim 13 has been amended by raising the lower value of the concentration of the one or

more detergent surfactants which have an HLB value of higher than 15 from 1 % to 5 % by weight. It is pointed out that TOUZAN expressly limits the concentration of surfactants to less than 2 % by weight and for this reason alone, does not render obvious the subject matter of present claim 13 and the claims dependent therefrom. Accordingly, withdrawal of the rejection of claims 13-17, 26, 30, 32-35 and 45-49 under 35 U.S.C. § 103(a) over TOUZAN is warranted and respectfully requested.

Applicants are aware that the Examiner takes the position that raising the lower value of the concentration of the detergent surfactants above the limit expressly taught by TOUZAN is allegedly rendered obvious in view of GIACOMONI and DIXON. The corresponding allegations set forth in the present Office Action will be discussed below with respect to the rejection of independent claim 36 and the claims dependent therefrom.

Response to Rejection of Claims under 35 U.S.C. § 103(a) over TOUZAN in View of SCHOENROCK

Dependent claims 28 and 29 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over TOUZAN and further in view of SCHOENROCK. The rejection essentially asserts that SCHOENROCK discloses the oils recited in claims 28 and 39 for use in cosmetic formulations, wherefore it would allegedly have been obvious to one of ordinary skill in the art to include these oils in the self-foaming formulations of TOUZAN.

Applicants respectfully disagree with the Examiner in this regard as well but refrain from commenting on the corresponding allegations set forth in the present Office Action because claims 28 and 29 are directly or indirectly dependent from claim 13, which latter claim is not rendered obvious by any of the documents cited in the present

Office Action, as is set forth in detail below. Accordingly, withdrawal of the rejection of claims 28 and 29 is warranted as well.

Response to Rejection of Claim 31 under 35 U.S.C. § 103(a) over TOUZAN in View of GIACOMONI

Dependent claim 31 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over TOUZAN and further in view of GIACOMONI. The rejection concedes that TOUZAN fails to teach NO synthase inhibitors for inclusion in the self-foaming formulations disclosed therein but essentially asserts that GIACOMONI teaches that NO synthase inhibitors reduce the skin irritation effect of topically applied cosmetic or pharmaceutical substances, such as ionic detergents, thereby allegedly rendering obvious the subject matter of claim 31.

Applicants respectfully disagree with the Examiner in this regard as well but refrain from commenting on the corresponding allegations set forth in the present Office Action because claim 31 is indirectly dependent from claim 13, which latter claim is not rendered obvious by any of the documents cited in the present Office Action, as is set forth in detail below. Accordingly, the rejection of claim 31 is unwarranted as well.

Response to Rejection of Claims under 35 U.S.C. § 103(a) over TOUZAN and GIACOMONI in View of DIXON

Claims 36-40 and 44 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over TOUZAN and GIACOMONI and further in view of DIXON. The rejection acknowledges that TOUZAN limits the amount of surfactants to (less than) 2 % by weight for the users with sensitive skin (whereas present independent claim 36 recites

a lower value of the amount of the one or more detergent surfactants of 5 % by weight – the same as amended independent claim 13) but essentially alleges that GIACOMONI teaches that by including NO synthase inhibitors higher amounts of skin irritation causing detergents can be used. The rejection also asserts that Examples 1 and 2 of DIXON disclose skin cleansing and moisturizing compositions which contain 5.5 % by weight of sodium laureth sulfate and also comprise components which are similar to those used in the formulations of TOUZAN. The Examiner essentially takes the position that in view of the combined teachings of TOUZAN, GIACOMONI and DIXON one of ordinary skill in the art “would have been motivated to modify the teaching of Touzan by increasing the amount of sodium laureth sulfate, as motivated by Dixon, because 1) Giacomoni suggests that the addition of NO-synthase inhibitor permits the use of a higher amount of a foaming surfactant; and 2) Dixon teaches a similar polymeric oil-in-water cleansing composition with up to 5.5% of the same foaming surfactant that is used in Touzan. The skilled artisan would have had a reasonable expectation of successfully producing a stable cleansing composition with higher foaming properties that is still suitable for sensitive skin.”

Applicants respectfully traverse this rejection. Specifically, it is pointed out that the compositions of TOUZAN and DIXON differ significantly, and for this reason alone, one of ordinary skill in the art would not have been motivated to modify the formulations of TOUZAN according to one individual aspect of the formulations of DIXON.

For example, the formulations of TOUZAN are self-foaming and are in the form of a post-foaming pressurizable oil-in-water emulsion (see e.g., Abstract and col. 2, lines

61-67 of TOUZAN). In contrast, none of the compositions of DIXON is indicated or even intended to be self-foaming.

Further, an essential component of the formulations of TOUZAN is a gelling system which comprises at least one emulsifying polymer which is selected from crosslinked homopolymers and copolymers based on various cationic or anionic monomers optionally in combination with nonionic monomers (see e.g., Abstract and col. 3, line 20 to col. 4, line 5 of TOUZAN).

In contrast, the compositions of DIXON comprise certain water dispersible gel forming polymers (see, e.g., Abstract of DIXON). None of these polymers is indicated to be crosslinked, nor can it reasonably be assumed that any of these polymers is present in a crosslinked form. According to col. 4, lines 64-67 of DIXON these polymers (stabilizers) provide improved shelf stability but allow the lipid in water emulsion to separate upon dilution to a lather concentration and thereby provide for increased lipid deposition onto the skin.

In this regard, it is further noted that the formulations of TOUZAN do not appear to be intended and formulated for depositing a significant amount of lipid onto the skin. DIXON on the other hand, requires a minimum Lipid Deposition Value of the compositions disclosed therein (see, e.g., Abstract).

At any rate, even if one were to assume, merely for the sake of argument, that one of ordinary skill in the art would recognize that by incorporating an NO synthase inhibitor into the formulations of Examples 1 and 3 of TOUZAN one would be able to increase the concentration of sodium laureth sulfate to the levels used in the compositions of DIXON without causing significant skin irritation, Applicants are unable to see what

would motivate one of ordinary skill in the art to increase the concentration of sodium laureth sulfate in the formulations of TOUZAN.

Applicants are aware that the Examiner takes the position that one of ordinary skill in the art would expect “higher foaming properties” by increasing the concentration of surfactant in the formulations of TOUZAN. However, TOUZAN does not convey the impression that the foaming properties of the formulations disclosed therein leave anything to be desired, let alone that a steep increase (i.e., by a factor of at least 2.5) in the concentration of sodium laureth sulfate or any other surfactant would be desirable for increasing the foaming properties of the formulations. On the contrary, TOUZAN states that even in the absence of surfactant a “very satisfactory mousse” is obtained (col. 5, lines 1-2).

TOUZAN does state that “the presence of a foaming surfactant may promote the formation of a more aerated and voluminous mousse” but does not convey the impression that the presence of (significantly) more than 2 % by weight of foaming surfactant would afford drastically improved results in this regard. In fact, according to TOUZAN the (foaming) surfactants are preferably present in a concentration of (only) 0.5 to 1.5 % by weight, i.e., not even in the full concentration of (less than) 2 % by weight which is permissible according to TOUZAN.

It is noted that in accordance with this general teaching of TOUZAN, the self-foaming cleansing creams of Examples 1 and 3 thereof contain sodium laureth sulfate in a concentration of 1 % and 1.5 % by weight, respectively, whereas the self-foaming cleansing cream of Example 2 does not contain any surfactant at all.

To sum up, due to the significant differences in the compositions of TOUZAN and DIXON one of ordinary skill in the art would not be motivated to increase the level of sodium laureth sulfate in the formulations of TOUZAN to the levels used in the formulations of DIXON. Moreover, it is not apparent which benefit could be obtained by (drastically) increasing the concentration of surfactant in the formulations of TOUZAN beyond the maximum concentration of 2 % by weight taught in this document.

Applicants submit that for at least all of the foregoing reasons, the rejection of claim 36 (and amended claim 13) and the claims dependent therefrom under 35 U.S.C. § 103(a) over TOUZAN and GIACOMONI and further in view of DIXON is without merit, wherefore withdrawal thereof is warranted and respectfully requested.

Response to Provisional Nonstatutory Double-Patenting Rejection

Claims 13-17, 26, 30-40 and 44-49 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1-5, 7-21, 26-29, 31-34 and 40-44 of co-pending Application No. 10/830,001.

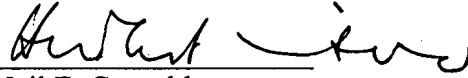
Applicants respectfully request that this rejection be held in abeyance until the Examiner has indicated allowable subject matter. Applicants will then decide whether or not it is necessary to file a terminal disclaimer in the present application.

CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet

remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,
Stephan RUPPERT et al.



Neil F. Greenblum
Reg. No. 28,394

March 27, 2007
GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191

Heribert F. Muensterer
Reg. No. 50,417